UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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DISTRICT OF NEW MEXICO

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CYNTHIA J. PATTERSON,

Plaintiff,

vs. No.

EL REFUGIO, INC., MARIA MORALES-LOEBL,
AMY C. DeLANEY-HERNANDEZ, and
DELANEY & HERNANDEZ, LLC.

CIV-04-0043 JP ACT

Defendants.

JURY DEMAND

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff, Cynthia J. Patterson, by and through her attorney of record, J. Edward Hollington, J. Edward Hollington & Associates, and for her Complaint against the Defendants, states:

1. Plaintiff, Cynthia J. Patterson (hereinafter, Ms. Patterson), is a resident of Silver City, Grant County, New Mexico.

2. Defendant, El Refugio, Inc. (hereinafter, ERI), is a New Mexico non-profit corporation principally located in Silver City, Grant County, New Mexico.

3. Defendant, Maria Morales-Loebl (hereinafter, MML) is the executive director of ERI, and she is a resident of Silver City, Grant County, New Mexico.

4. Defendant Amy C. DeLaney-Hernandez (hereinafter, ADH) is a resident of Deming, Luna County, New Mexico.

5. Defendant DeLaney & Hernandez, LLC is a New Mexico limited liability corporation, which is principally located in Deming, Luna County, New Mexico.

6. All occurrences and transactions pertinent to this action occurred in Silver City, Grant County, New Mexico.

7. This Court has jurisdiction of the parties and subject matter pursuant to 42 USC § 1981, 42 USC § 2000(e), et seq., and 28 USC § 1367.

STATEMENT OF FACTS

8. Plaintiff, Ms. Patterson, is an attorney licensed by the state of New Mexico to practice law, and her license is in good standing.

9. Ms. Patterson was employed as the staff attorney for defendant El Refugio, Inc. (ERI), from June 1, 1999 until May 12, 2003.

10. ERI is a New Mexico non-profit corporation, originally formed in March of 1983, to provide shelter and services for battered women.

11. ERI currently provides services to victims of domestic violence and sexual abuse in Grant, Hidalgo, Luna, and Catron counties, New Mexico.

12. Ms. Patterson was hired to provide legal services to the eligible clients of ERI.

13. ERI receives public money in the form of grants from state and federal agencies. Most of ERI program and operational funding is provided through the New Mexico Children Youth and Families Department (CYFD).

14. Until approximately December 31, 2002, ERI received grant monies directly from the United States Department of Justice (DOJ) under the Office of Justice Programs (OJP) for providing legal services to ERI clients.

15. ERI is governed by a Board of Directors.

16. ERI's principal business location is in Silver City, New Mexico. The building where ERI's business is principally located was constructed with Housing and Urban Development (HUD) community block development grant money on land donated by the city of Silver City, New Mexico.

17. All permanent full time employees of ERI are classified in accordance with rules and regulations set by the New Mexico State Personnel Board.

18. Ms. Patterson was a permanent full time employee of ERI.

19. Pursuant to ERI policies and procedures, any disciplinary action taken against an employee must be done fairly, consistently, and in proportion to the seriousness of circumstances.

20. Defendant Maria Morales-Loeble (hereinafter, MML) was hired as executive director of ERI on or about April 14, 2003. She is not an attorney.

21. Defendant MML has no authority to supervise Ms. Patterson's performance of her duties of providing legal services as an attorney to the clients of ERI.

22. As part of Ms. Patterson's legal representation of clients of ERI, Ms. Patterson is required by New Mexico Rules of Professional Conduct to protect attorney-client confidential information.

23. ERI has written policies that prohibit unauthorized disclosure of confidential information regarding clients' legal services, and the policies require that all employees exercise the most scrupulous protection of information regarding clients of ERI.

24. It is a public policy of the state of New Mexico for attorneys to protect attorney-client confidential information.

25. Ms. Patterson received favorable performance evaluations, and had no disciplinary action taken against her prior to her termination on May 12, 2003.

26. Shortly after Defendant MML was hired as executive director, she (MML) requested that Ms. Patterson disclose to her confidential information about clients of Ms. Patterson.

27. In response to Defendant MML's request for information about Ms. Patterson's clients, Ms. Patterson expressed concern several times about violating client confidentiality if she (Ms. Patterson) complied with MML's request however, MML continued to request the information from Ms. Patterson.

28. On April 22, 2003, Defendant Amy DeLaney-Hernandez (ADH), a licensed New Mexico attorney and managing member of DeLaney & Hernandez, LLC, and former employee and contract attorney for ERI, wrote a letter to Defendant MML accusing Ms. Patterson of committing legal malpractice.

29. On April 25, 2003, Defendant MML wrote a letter to Ms. Patterson demanding that she (Patterson) turn over information about clients Ms. Patterson was representing on behalf of ERI. Defendant MML claimed she wanted the information to respond to Defendant ADH's charge of malpractice against Ms. Patterson, and for "assessing the agencies delivery of services."

30. After receiving Defendant MML's memo, Ms. Patterson again expressed concern that the request was so broad and seemed to cover attorney-client confidential information.

31. Defendant MML, as executive director, had no right to receive attorney-client confidential information about RIE clients because she was not an attorney representing the client, and such disclosure would violate ERI confidentiality policies and procedures.

32. Shortly after receiving Defendant MML's memo requesting information, Ms. Patterson did provide to MML a spreadsheet which Ms. Patterson prepared on a monthly basis for state and federal funding agencies. The information on the spreadsheet provided general information about the number of clients, type of cases, dates cases were opened and closed, and other non-confidential information. Ms. Patterson had developed the spreadsheet to

provide funding agencies information about legal services provided by ERI. The spreadsheet did not contain confidential attorney-client information.

33. On May 9, 2003, Ms. Patterson sent a letter to Defendant MML and Francesca Esteves, president of the Board of Directors of ERI, expressing her concern about accusations of malpractice made against her (Patterson) by Defendant ADH. In the letter, Ms. Patterson also advised that she would retain legal counsel.

34. On May 12, 2003, Defendant MML, handed Ms. Patterson a letter of termination alleging that Ms. Patterson refused to provide information about clients despite the fact that Ms. Patterson had already given MML the spreadsheet regarding attorney services to ERI clients. The effective date of termination was May 12, 2003.

35. Ms. Patterson did not refuse to respond to Defendant MML's request, and did provide program information to her (MML).

36. On numerous occasions, Defendant MML displayed her animus against Anglo employees by constantly referring to and forcing the Spanish culture on Ms. Patterson and other non-Hispanic employees, by speaking Spanish during conversations in staff meetings for the purpose of excluding and intimidating non-Hispanic speaking employees. Defendant MML also made derogatory statements about Anglos.

37. Defendant MML is Hispanic, and Ms. Patterson is Anglo.

38. After Defendant MML terminated Ms. Patterson's employment, she (MML) gathered some of the ERI legal files, and delivered them to attorney J.C. Robinson, an attorney in Silver City with the firm of Robinson & Lopez, P.C. J.C. Robinson was not an attorney employed by ERI to represent the clients of ERI at the time he received the client legal files.

39. Before delivering client legal files to attorney Robinson, Defendant MML failed to conduct a conflicts review to insure that there was no conflict of interest to ERI clients in having their files being reviewed by attorney Robinson.

40. Defendant MML turned over at least one ERI client legal file to attorney Robinson, whose firm was representing that client's opposing party.

41. On June 16, 2003, Ms. Patterson, through her attorney, sent a letter to Defendant MML and the ERI board president objecting to the termination, and requesting a reconsideration. The letter constitutes a complaint pursuant to § 702 of the ERI employee handbook. Neither ERI or MML responded to her letter.

42. On June 25, 2003, Ms. Patterson filed a complaint against ERI with the Equal Employment Opportunity Commission (EEOC) for discrimination.

43. ERI is an employer as defined by 42 USC § 2000(e)(b).

44. On or about May 30, 2003, ERI published notices requesting proposals from attorneys to provide legal services for ERI clients.

45. Ms. Patterson met all qualifications for providing contract legal services, and she submitted a timely proposal to provide such services to ERI clients.

46. On or about July, 2003, Defendant MML awarded the contract for legal services to Defendant ADH.

47. Ms. Patterson has more experience in providing legal services to victims of domestic violence and sexual assault than Defendant ADH, and Ms. Patterson's proposal submitted to ERI included a lower contract price than that submitted by Defendant ADH.

48. On August 21, 2003, Ms. Patterson filed an Amended EEOC Complaint, No. 390-2003-01714, which added a claim of retaliation against ERI.

49. On October 30, 2003, the EEOC mailed the "Notice of Right to Sue" letter to Ms. Patterson.

50. Ms. Patterson has satisfied all administrative requirements for filing this Complaint of Discrimination and Retaliation pursuant to 1964 Civil Rights Act as amended in 1991, 42 USC § 2000(e) et seq.

51. The Defendants' conduct against Ms. Patterson constitutes wanton, willful, malicious, and careless disregard of Ms. Patterson's protected rights.

52. Ms. Patterson has lost income and benefits, including back pay, front pay, has suffered humiliation, emotional distress, and other compensatory damages to be proven at trial.

53. Ms. Patterson has incurred attorney fees and costs in bringing this action.

COUNT I
RETALIATORY DISCHARGE

54. Plaintiff realleges the allegations contained in paragraphs 1 through 53 of this Complaint as if fully set forth herein.

55. Ms. Patterson's actions in trying to protect ERI confidential attorney-client information furthers a public policy of the state of New Mexico.

56. Ms. Patterson was qualified for the position of staff attorney with ERI.

57. Defendant ERI's decision to terminate Ms. Patterson's employment was motivated, in part, by her actions attempting to protect ERI confidential attorney-client information.

58. As a proximate result of ERI's retaliatory conduct against Ms. Patterson, Ms. Patterson has incurred damages and losses, including loss of income and benefits, including back pay, front pay, pecuniary losses, and other compensatory damages to be proven at trial.

59. The conduct of Defendants ERI and MML constitute willful, wanton, and malicious conduct, and their actions constitute reckless disregard of Ms. Patterson's protected rights.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in her favor, and against the Defendant ERI, and award her damages for lost income and benefits, including back pay, front pay, compensatory damages, punitive damages, pre-judgment, post-judgment interest, costs, and such other and further relief as the Court deems just and appropriate.

COUNT II
RETALIATION IN VIOLATION OF 42 USC § 2000(e) - 3(a)

60. Plaintiff realleges the allegations contained in paragraphs 1 through 59 of this Complaint as if fully set forth herein.

61. Ms. Patterson was qualified to fill the position as staff attorney of ERI.

62. Ms. Patterson engaged in protected activity when she filed a complaint of discrimination with the EEOC, and New Mexico Human Rights Department (HRD).

63. The Defendant, ERI's, refusal to hire Ms. Patterson as a contract attorney was motivated, in part, by Ms. Patterson's filing of a complaint of discrimination against Defendant ERI.

64. As a proximate result of ERI's retaliatory conduct against Ms. Patterson, Ms. Patterson has incurred damages and losses, including loss of income and benefits, including back pay, front pay, pecuniary losses, and other compensatory damages to be proven at trial.

65. The conduct of Defendant ERI constitutes willful, wanton, and malicious conduct, and its actions constitute reckless disregard of Ms. Patterson's protected rights.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in her favor, and against the Defendant ERI, and award her damages for lost income and benefits, including back pay, front pay, compensatory damages, punitive damages, pre-judgment, post-judgment interest, costs, attorney's fees, and such other and further relief as the Court deems just and appropriate.

COUNT III
EQUAL PROTECTION (42 USC § 1981)

66. Plaintiff realleges the allegations contained in paragraphs 1 through 65 of this Complaint as if fully set forth herein.

67. Ms. Patterson was qualified to fill the position as staff attorney of ERI.

68. The decision to terminate Ms. Patterson's employment was motivated, in part, by her race (Anglo).

69. Defendant ERI's refusal to award Ms. Patterson the contract to provide attorney services to ERI clients was, in part, motivated by her race.

70. Other similarly situated employees of ERI were treated differently than Ms. Patterson.

71. As a proximate result of Defendant ERI's discriminatory conduct, Ms. Patterson has incurred damages and losses, including loss of income and benefits, including back pay, front pay, pecuniary losses, and other compensatory damages to be proven at trial.

72. The conduct of Defendant ERI constitutes willful, wanton, and malicious conduct, and its actions constitute reckless disregard of Ms. Patterson's protected rights.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in her favor, and against the Defendant ERI, and award her damages for lost income and benefits, including back pay, front pay, compensatory damages, punitive damages, pre-judgment, post-judgment interest, costs, attorney's fees, and such other and further relief as the Court deems just and appropriate.

COUNT IV
CONSPIRACY TO INTERFERE WITH CONTRACTUAL RELATIONS AND/OR PROSPECTIVE ECONOMIC ADVANTAGE

73. Plaintiff realleges the allegations contained in paragraphs 1 through 72 of this Complaint as if fully set forth herein.

74. Defendants MML, DeLaney & Hernandez, LLC (D&H) and ADH entered into agreements to terminate Ms. Patterson's employment.

75. Defendants MML, D&H, and ADH's conduct was done for improper purposes, and was carried out by improper means and procedures.

76. Defendants MML, D&H and ADH's acts were done without adequate justification, and were intended to cause harm to Plaintiff.

77. As a proximate result of Defendants MML, D&H and ADH's wrongful conduct, Plaintiff has incurred damages and losses, including loss of income and benefits, including back pay, front pay, pecuniary losses, and other compensatory damages to be proven at trial.

78. The conduct of Defendant ERI constitutes willful, wanton, and malicious conduct, and its actions constitute reckless disregard of Ms. Patterson's protected rights.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in her favor, and against the Defendants MML, D&H, ERI and ADH, jointly and severally, and award her damages for lost income and benefits, including back pay, front pay, compensatory damages, punitive damages, pre-judgment, post-judgment interest, costs, and such other and further relief as the Court deems just and appropriate.

COUNT V
BREACH OF CONTRACT

79. Plaintiff realleges the allegations contained in paragraphs 1 through 78 of this Complaint as if fully set forth herein.

80. Defendant ERI's policies, procedures, representations, and usual and customary conduct constituted promises to Ms. Patterson that her employment would continue as long as she satisfactorily performed her job duties. ERI promised Ms. Patterson and other employees that their jobs would not be terminated without cause.

81. Defendant ERI breached Plaintiff's contractual rights when it terminated her employment on May 12, 2003. As a proximate result of ERI's breach of Ms. Patterson's contractual rights, Ms. Patterson has incurred losses, including loss of income and benefits, back pay, front pay, and other pecuniary losses.

82. Defendant ERI's conduct constitutes willful, wanton, malicious conduct, and was done in reckless disregard of Ms. Patterson's contractual rights.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against the Defendant ERI, and in her favor, and award her damages for loss of income and benefits, back pay, front pay, costs, pre-judgment and post-judgment interest, and such other and further relief as the Court deems just and appropriate.

COUNT VI
DEFAMATION AGAINST DEFENDANT AMY DeLANEY-HERNANDEZ

83. Plaintiff realleges the allegations contained in paragraphs 1 through 82 of this Complaint as if fully set forth herein.

84. Defendants ADH and D&H made reckless and false statements about Ms. Patterson.

85. Defendants ADH and D&H knew or should have known that her accusations of legal malpractice against Ms. Patterson were false or recklessly made.

86. Defendants ADH and D&H published defamatory statements to others about Ms. Patterson.

87. Defendants ADH and D&H intended to cause harm and injury to Plaintiff by publishing defamatory statements.

88. As a proximate result of Defendants ADH's and D&H's defamatory conduct, Plaintiff has suffered losses in the form of loss of income and benefits, back pay, front pay, humiliation, damage to professional reputation, emotional distress, and other compensatory damages to be proven at trial.

89. Defendants ADH's and D&H's conduct constitutes wanton, willful, malicious conduct, and was done in reckless disregard of Ms. Patterson's rights and interest.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment in her favor and against Defendants ADH and D&H, and award her damages for loss of income and benefits, including front pay, back pay, emotional distress, humiliation, damage to professional reputation, punitive damages, pre-judgment, post-judgment interest, costs, and such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.

By: ______________________
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